



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-008

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

In the rule summary’s listing of statutory authority and the explanation of agency authority, the citations should be revised to be more precise. For example, both instances of the citation to s. 29.014, Stats., should more precisely cite to sub. (1) of that section, and the citation to s. 29.053, Stats., in the listing of statutory authority, should more precisely cite to sub. (2) (intro.) of that section.

2. Form, Style and Placement in Administrative Code

a. In the rule summary’s listing of statutes interpreted, the citation to s. 29.014, Stats., should more precisely cite to sub. (1) of that section.

b. In the rule summary’s plain language analysis, a more descriptive analysis should be given. The analysis should describe the current rule and how the proposed rule revises or expands those provisions. Consider, for example, modeling the description from the “Analysis of the Rule – Rule Effect – Reason for the Rule” in the document titled “Report to Legislative Council Rules Clearinghouse”.

c. In the rule summary’s explanation of agency authority, the paragraph describing federal law should be moved to the summary and comparison with federal statutes and regulations.

d. The rule summary’s listing of the deadline to submit comments should specify the date of the public hearing or how a reader could determine that date, rather than referring only generally to submission “at the public hearings” with dates “to be determined”.

e. The title for s. NR 11.10 should use a capital letter for only the initial word. The three subsection titles should use small capital letters. [s. 1.05 (2) (b) and (c), Manual.]

f. In s. NR 11.10 (1), there is only one paragraph. When creating rule subunits, at least two subunits must be created. [s. 1.03 (1), Manual.] In lieu of creating par. (a), the definition of “pan tension” could occupy the entirety of sub. (1).

g. In s. NR 11.10 (1), the title “Definitions” could be replaced with “Definition” given that there is a single term defined.

h. In s. NR 11.10 (2) (a), (b), and (c), the following revisions should be made:

(1) In each paragraph, the phrasing should be revised to avoid the use of parentheses to identify the affected counties. For example, par. (a) could be phrased as “The Clam Lake area within Ashland, Bayfield, and Sawyer Counties.”. [s. 1.01 (6), Manual.]

(2) Each instance of the word “area” should not be capitalized. [s. 1.01 (4), Manual.]

(3) A period should be inserted at the end of each paragraph. [s. 1.03 (4), Manual.]

i. In s. NR 11.10 (3) (title) and (intro.), both instances of the phrase “Marten Protection Closed Area” should not be capitalized. However, as noted in comment 2. e., the subsection title should be formatted in small capital letters. [s. 1.01 (4), Manual.]

j. In s. NR 11.10 (3) (intro.), the phrase “Marten Protection Closed Area” is not defined or described. If that phrase is meant to refer to the shaded area in each of the three maps in sub. (2), the department could consider modifying sub. (2) (intro.) by replacing “following areas” with “following marten protection closed areas”. Also, in the Apostle Islands area map, note that the shaded area in that map is labeled “American Marten Protection Area” not “Marten Protection Closed Area”; the terminology should be revised to be consistent.

k. In s. NR 11.10 (3) (a) to (d), the singular should be used in lieu of the plural. For example, in par. (a), the singular would be phrased as: “A cage, box trap, or cable restraint that is in compliance with s. NR 10.13.”. [s. 1.01 (9) (e), Manual.]

l. In s. NR 11.10 (3) (a), replace the comma at the end of the provision with a period. [s. 1.03 (4), Manual.]

m. In s. NR 11.10 (3) (b), the abbreviation “s.” should be inserted before “NR 10.13 (3) (d)”. [ss. 1.03 (1) (Example) and 1.07 (2) (Note 2), Manual.]

n. In s. NR 11.10 (3) (c), the following revisions should be made:

(1) The formatting for the reference to “NR 11.10 (2) (a) & (c)” should be revised to “sub. (2) (a) and (c)”. This is an external cross-reference to a different subsection within the same section. Also, the ampersand is an abbreviation and generally should not be used. [ss. 1.01 (8) and 1.07 (2) (Table), Manual.]

(2) The abbreviation “lbs.” should be revised to the word “pounds”. Generally, abbreviations should be used only to improve readability. [s. 1.01 (8), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 11.10 (3) (b), is “weasel boxes” the correct term? It is not used in the rule that is cross-referenced. Would “Set placed for weasels in compliance with s. NR 10.13 (3) (d)” be an accurate description of this type of trap? If the department feels it is important to use the colloquial nomenclature somewhere in the rule, perhaps it could be included in a note under this paragraph, such as: “Note: This type of set is commonly referred to as a weasel box.”.

b. In s. NR 11.10 (3) (d), are the terms “body-gripping traps” and “water sets” correct? In the rule that is cross-referenced, s. NR 10.13, these devices are called “body-gripping type traps” and “watersets”, respectively.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department could consider clarifying the maps in s. NR 11.10 (2) in three respects:

- (1) The second map identifies the shaded area as “American Marten Protection Area”. The other two maps do not. Is there a distinction between the two approaches? [See, also, comment 2. j., above.]
- (2) In the second map, Eagle Island (southwest of Sand Island) does not appear to be shown. Is its exclusion from the map intentional? Perhaps more to the point, if the goal is to include all islands in the national lakeshore, could that be stated in lieu of a map?
- (3) The first and third map identify county boundary lines with a dash and dot line. The second map identifies the county boundary line with a solid line. Consider revising the second map to match the formatting and style of the other two maps.

b. The current text of s. NR 11.10 that is proposed to be repealed and recreated by this rule references areas that are “posted with department signs”, but the proposed rule does not. Is the omission of a posting requirement from proposed s. NR 11.10 (2) (intro.) intentional, or should that be corrected?

c. In s. NR 11.10 (3) (c), there is a reference to certain jawed traps “that include” a pan tension of no less than four pounds. It is ambiguous whether this is meant to exclude a jawed trap having a lesser minimum pan tension. If the department wishes to prohibit the use of a jawed trap with a pan tension of less than four pounds, it could replace “that include” with “having”, “with”, “set to”, “calibrated to” or something similar. This provision should be revised to specify the department’s intent for allowable pan tension.

d. In s. NR 11.10 (3) (c) (Note), the purpose of the note is unclear. Is the department attempting to notify trappers that they may adjust the pan tension of their traps in order to comply with the minimum tension requirement of the rule? If so, the note could be modified by replacing “is frequently modified through the use of” with “is capable of modification through the use of” or something similar. Alternatively, is the department attempting to warn trappers that pan tension may have been unwittingly altered by an external factor? If so, the note could be modified to read: “Care should be taken when determining pan tension because it may have been modified through the use of ...” or something similar. Also, is there an established method of gauging pan tension? If not, the department may wish to provide guidance in this regard, especially if it will affect enforcement action. Lastly, the note is missing a period, which should be inserted at the end of the provision.